

APR 10 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KENNETH DESHON MCGEE,

Defendant - Appellant.

No. 05-30160

D.C. No. CR-97-00092-a-HRH

MEMORANDUM*

Appeal from the United States District Court
for the District of Alaska
H. Russel Holland, Chief District Judge, Presiding

Submitted April 5, 2006**

Before: HAWKINS, McKEOWN, and, PAEZ, Circuit Judges.

Kenneth Deshon McGee appeals pro se from the district court's order denying of his Federal Rule of Civil Procedure 60(b) motion, in which he claimed that counsel appointed to represent him on his 28 U.S.C. § 2255 motion was ineffective, and that his original criminal conviction for conspiracy and possession

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

of cocaine with the intent to distribute was obtained through fraudulent search warrants. We have jurisdiction pursuant to 28 U.S.C. § 1291.

The district court did not abuse its discretion in denying McGee's Rule 60 motion. There cannot be ineffective assistance of counsel in cases where, as here, the appellant had no constitutional right to counsel. *See Sanchez v. United States*, 50 F.3d 1448, 1456 (9th Cir. 1995) (rejecting claim for ineffective assistance of counsel "because there is no constitutional right to counsel at a collateral, post-conviction section 2255 proceeding").

McGee's remaining contentions were not certified by the district court and are construed as a motion to broaden the certificate of appealability. *See* 9th Cir. R. 22-1(e). So construed, we deny the motion. *See Hiivala v. Wood*, 195 F.3d 1098, 1104 (9th Cir. 1999) (noting that broadening certificate of appealability requires "substantial showing of the denial of a constitutional right").

McGee's Motion to Supplement Pursuant to Federal Rule of Appellate Procedure 28(j), filed on July 11, 2005, is denied as moot.

AFFIRMED.